In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 78-481

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL NO. 6, AFL-CIO,
Petitioner,

vs.

SAN FRANCISCO ELECTRICAL CONTRACTORS ASSOCIATION,
Respondent,

COLLINS ELECTRIC COMPANY,
Real Party in Interest.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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The respondent, San Francisco Electrical Contractors Association (SFECA), and Collins Electric Company, real party in interest, respectfully request that this Court deny the Petition for a Writ of Certiorari, seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 577 F.2d 529, and appears at pages A-1 through A-12 of appendix to the petition before this Court.

JURISDICTION

The judgment of the Court of Appeals (App. B) was entered on June 22, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Petition was received by respondent's attorney on September 20, 1978.

QUESTIONS PRESENTED

The general question presented is whether the U.S. District Court possessed jurisdiction under § 301 of the Taft-Hartley Act, 29 U.S.C. § 185, to enforce an arbitration award on the merits, by enjoining post-award strike activity over completely identical issues.

Incidental to resolution of this issue are the following related questions:

1. Whether bargained-for finality of an arbitration award after full hearing on the merits, eliminates any further duty of identical parties to arbitrate identical issues.

2. Whether the U.S. District Court, rather than a new and different arbitrator, has primary jurisdiction to determine finality of an arbitration award as an incident of enforcement of the award.

3. Whether the District Court's action in construing the scope and finality of the award, and granting injunctive relief to enforce it, was a proper accommodation of Section 301 of the Taft-Hartley Act with Sections 4, 7, 8 and 9 of the Norris-LaGuardia Act, pursuant to *Boys Market v. Retail Clerks Union*, 398 U.S. 235 (1970).

STATUTES INVOLVED

Respondent's discussion of statutes herein includes only those set forth in Appendix J to the Petition.

CONTRACTUAL PROVISIONS INVOLVED

Respondent's discussion of relevant contract terms requires no references other than to the terms set forth in the petition, pages 3 and 4.

STATEMENT OF THE CASE

Respondent, San Francisco Electrical Contractors Association, (SFECA) is the duly recognized business representative and bargaining agent for member employers, including Collins Electric Company of San Francisco, real party in interest (Collins).

In 1976, the Bank of America N.T. & S.A. engaged in the erection of a 23-story computer data center in San Francisco. Timely completion was absolutely critical to the owner and all contractors, as over one-half billion dollars worth of computer equipment was scheduled to begin service immediately thereafter.

Collins became involved when it contracted, with the general contractor, to furnish and install 11,000 conventional Westinghouse light fixtures, with all necessary branch wiring, and all other temporary and permanent wiring for the structure and computer complex.

In November or December, 1976, the bank, as owner, informed Collins of its desire to substitute the entire system of conventional lighting, with a completely pre-assembled system called Electro-Connect (ECS). ECS, as graphically demonstrated in an illustrated sales brochure (which was a central exhibit to the later arbitration) is a fully integrated, factory-assembled lighting and power distribution system. Prior to installation, the owner's architects and

electrical engineers applied for special approval by the San Francisco County electrical and building inspectors, and by letter of January 7, 1977 advised them that:

> "The system as proposed for use in San Francisco is U.L. approved and listed and *will be connected to lighting fixtures* which also will be U.L. approved and *listed with a plug-in feature.* The pieces of flexible connector will be ordered to specific lengths and the *plugs installed and wired at the factory.* If the flexible connectors are properly scheduled and ordered, *there should be no need to field-cut or wire any of the lighting system connections beyond the distribution boxes.*" (emphasis added)

This letter was also one of Collins' central exhibits to the later arbitration, and still later an exhibit to Respondent's complaint for injunctive relief.

Several weeks after Collins received the Change Order for ECS from the owner and its agents, petitioner (Local 6) first expressed its objection to the ECS use, alleging that it infringed on a work preservation clause of the collective bargaining agreement in force between the parties. By letter to Collins of January 13, 1977, Local 6 clearly expressed its concern with ECS, as a lighting fixture *system,* and demonstrated its understanding that prewired assembles and fittings were central aspects. The letter, as an exhibit to the arbitration and later complaint for injunction, provides in pertinent part:

> *"This office has just become aware that your firm is contemplating using a lighting fixture system such as the Electro-Connect system* on your Bank of America job here in San Francisco.

> *It is our understanding that such a system comes with prewired assemblies of wiring and fittings.*
>
> It is the position of the I.B.E.W. Local Union No. 6, that any such system would be installed in direct violation of that Labor-Management Committee decision and it would also be a breach of the current inside Agreement." (emphasis added)

In response to the union objection, the dispute over the ECS was mutually submitted to the grievance and arbitration procedures mandated as "final and binding" by Section 8 of the working agreement (quoted at page 4 of petition).

The scope of issues and supporting evidence presented to the arbitrator on March 17, 1977, consumed a full day of hearing, and included over 100 separate pages of printed and photographic matter. Each side introduced numerous exhibits at the outset of the hearing, and engaged in substantially unrestricted cross-examination of each other's witnesses.

Additionally, both pretrial and post-trial briefs were submitted by the parties, creating a combined record of briefs, exhibits, and transcripts in excess of 350 pages.

Of central concern to SFECA, and more so to the union, were fact issues of:

1. Estimated losses of protected work if the ECS system were installed as ordered, and

2. Whether or not Collins had unilaterally exercised "control" in connection with the selection or substitution of ECS for the conventional Westinghouse fixtures, pursuant to the "control test" set forth in this Court's recent opinion in *National Labor Relations*

Board v. Enterprise Association, NLRB v. Plumbers Local 638 (Enterprise Association), et al., 429 U.S. 507, 97 S.Ct. 891 (1977).

The arbitrator, to avoid further delay on the construction work, announced an abbreviated award in favor of Collins, on May 3, 1977:

> "The grievance is denied. Thus the employer may use the Electro/Connect system in the Bank of America fixture installation job at Market and Van Ness without violation of the collective bargaining agreement of the National Labor Relations Act."

Pursuant to stipulation, the full written opinion followed several weeks later. In the interim, complying with the *owner's* Change Order, Collins sent back the conventional Westinghouse fixtures to the Westinghouse factory where they could be modified to integrate the ECS female adapter plugs. Both the ECS adapter plugs and the Underwriter's Laboratory approval of their combination into a "prefabricated *lighting and power distribution assembly*" had been set forth in respondent's exhibits to the arbitration.

Despite the fact that these aspects of work elimination, fixture adapters, and U.L. approved factory pre-fabrication had just been set forth at arbitration on March 17, 1978, the union by letter of March 18, 1977 demanded additional data on these issues, and violated the no-strike clause of the contract by refusing to handle the factory-modified fixtures. (See text of letter, page I-1 of appendix to petition)

Because the issues had just been submitted to the arbitrator, and the union had already examined all exhibits,

especially the product brochures, U.L. rating certificates, and cross-examined Collins' president as to the company role in using the ECS, Collins and SFECA declined any further debate with the union. The union's alleged surprise and feigned lack of information over the factory modification of the conventional fixtures is in direct conflict with its analysis of the ECS system as presented one day before to the arbitrator, and summarized in his full written opinion of May 26, 1977.

The arbitrator's opinion recited the testimony and position set forth by the union. In pertinent part, union counsel and witnesses claimed that:

> ". . . Normally, a project similar to the Bank of America job would require that employees covered by the contract perform the following work:
>
> > . . . splicing the wires from the flex and the wires coming into the junction box from the distribution panel; closing the junction boxes; *assemblying the fixtures, attaching the fixture to the flex and splicing the fixture wires to those in the flex; and putting the cover on the fixture and installing the light tubes and defuser.*
>
> *Based upon a description of the Electro/Connect system as set forth in the manufacturer's brochure, a union witness estimated that 90% of the work described above would be eliminated if Electro/Connect were used."* (emphasis added) (Page F-5, appendix to Petition)

The arbitrator then summarized the union position, including the *union's* conclusion that:

> "2. According to the Underwriters Laboratories (UL), Electro/Connect is a prefabricated lighting and power distribution assembly. *It is totally pre-*

fabricated prior to delivery to the job site." (emphasis added)

On being advised of respondent's refusal to further discuss the system pending the arbitrator's decision, the union *did not* seek to re-open the matter before the arbitrator having responsibility for the original grievance. Instead, it apparently gambled that it would prevail, and took *no steps* to perfect a formal, subsequent grievance until *after* the unfavorable award issued on May 3, 1977.

Faced with respondent's refusal to engage in further grievance procedures over identical issues resolved by the award, the union filed an unfair labor practice charge with the National Labor Relations Board based on the refusal. The NLRB, after reviewing in depth the *full series* of exhibits, briefs and award involved in the arbitration, rejected the claim with the following explanation.

> "The investigation disclosed insufficient evidence to support the charge in that *the union apparently had ample opportunity to solicit the information* [that the Westinghouse unit would be factory modified] by questions during the arbitration proceeding and failed to do so. *In this regard, it is noted that the Union also failed to move for reopening of the arbitration proceeding even after it received the allegedly new knowledge of the nature of the work involved.* Under all of these circumstances, it is concluded that further proceedings are not warranted. I am, therefore, refusing to issue complaint in this matter."

Despite specific fact findings by the arbitrator that

> "Collins Electric is *powerless* to provide the work which the Union demands unless the Bank of America is prepared to forego the use of the Electro/Connect system." (F-12, appendix to Petition),

the union continued to pressure Collins for further grievance of the issues. Rather than seeking a judicial order for further grievance and arbitration, the union next delivered Collins an ultimatum, threatening strike action.

Collins refused to delay the closely scheduled construction job with further grievance and arbitration proceedures, which had already consumed or otherwise obstructed many weeks of its alloted time for performance. The union stopped *all* phases of electrical work on June 27, 1977. Collins, with SFECA, applied for injunctive relief by the District Court on June 30, and filed the union's stipulation to state court confirmation of the award the same day.

Collins and SFECA supported their application for injunctive relief with numerous exhibits originating from the arbitration plus excerpts of the award, plus extensive declarations relating to:

1. Immediately impending risks of life and property at the job site due to the strike;

2. Financial injuries to Collins and the owner posed by delay;

3. Major acts of vandalism to the job.

Following oral argument and memoranda of law by counsel for both parties, a temporary restraining order issued enjoining strike activity pending further hearings on the propriety of a preliminary injunction.

Approximately two weeks later, counsel for both sides submitted further briefs, oral argument, and testimony bearing on:

1. The scope of issues presented before the arbitrator;

2. The scope of issues for which the union sought further grievance;

3. The scope of issues and evidence resolved by the arbitration award;

4. The nature and extent of Collins' conduct in reliance upon the owner's change order and the arbitrator's award;

5. The nature of financial recovery which the union would claim in the event a second arbitration were ordered;

6. The circumstances surrounding the union's failure to re-open the original arbitration;

7. The duty of the parties to engage in further arbitration of identical issues as a condition to continued injunction of strike activity;

8. Whether bargained-for finality of an arbitration award could be enforced by the District Court;

9. Jurisdiction in the District Court to hear the above cited issues, and to grant injunctive relief.

10. Equitable basis for injunctive relief.

At the close of hearings, the District Court issued a preliminary injunction of strike activity, without requiring additional arbitration, based on its findings of facts and conclusions of law. (set forth at D1-D6 of appendix to petition)

On appeal, the judgment of the District Court was affirmed. The following trial finding of fact was obviously deemed of controlling significance in the opinion of the 9th Circuit Court of Appeals:

> "12. There was before the arbitrator the specific question as to whether the installation of a complete Electro Connect system was a violation of the collective bargaining agreement, and what defendant seeks herein to do is to take a portion of that installation and again engage in said grievance procedure despite the fact that the portion is part of the whole system, which point *was fully discussed in its entirety before said arbitrator.*" (emphasis added) (A-12, appendix to petition)

REASONS FOR DENYING THE WRIT

I. No Substantial Conflict Exists With Other Lines of Cases.

The Court of Appeals decision neither conflicts with nor misconstrues any pertinent lines of cases decided by this Court. Contrary to the union's assertions, the relief granted by the District Court, and affirmed on appeal, *preserves* the integrity of the arbitration process, by enforcing bargained-for finality of awards.

This Court's most current pertinent opinion regarding equitable enforcement of arbitration procedures is *Boys Markets Inc. v. Retail Clerks Union, Local 770,* 398 U.S. 235, 90 S.Ct. 1583 (1970). There, this Court re-assessed the proper role and necessity for equitable relief in the context of mandatory arbitration of labor disputes:

> "An incentive for employers to enter into such an arrangement is necessarily dissipated if the principal and

most expeditious method by which the no-strike obligation can be enforced is eliminated . . .

. . . Even if management is not encouraged, by the unavailability of the injunction remedy, to resist arbitration agreements, the fact remains that the effectiveness of such agreements would be greatly reduced if injunctive relief were withheld. Indeed, the very purpose of arbitration procedures is to provide a mechanism for the *expeditious settlement* of industrial disputes *without* resort to strikes, lock-outs, or other self-help measures. This basic purpose is obviously largely undercut if there is no *immediate, effective* remedy for those very tactics which arbitration is designed to obviate." (emphasis added) 398 U.S. 235, 248, 90 S.Ct. 1583, 1590.

It is true that *Boys Market conditioned* the availability of the strike injunction on the willingness of the employer to submit the dispute to binding arbitration. However, the end purpose of such a requirement was the peaceful, final resolution of a labor dispute, *after* a hearing on the merits.

As clearly reiterated by this Court in *Buffalo Forge v. United Steelworkers of America, AFL-CIO,* 428 U.S. 397, 412, 96 S.Ct. 3141, 3149 (1976).

> "'*Final adjustment* by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.' *Gateway Coal Co. v. Mine Workers,* 414 U.S. at 377, 94 S.Ct. at 636." (emphasis added)

This Court, in a separate passage from its opinion in *Buffalo,* described the central purpose and effect of its earlier *Boys Market* ruling:

> "The driving force behind *Boys Market* was to implement the strong congressional preference for private dispute settlement mechanisms agreed upon by the parties." 428 U.S. at 407.

These policies and concepts are all directly served by injunction of strike activity perpetrated by a union, over issues just fully resolved by binding abitration.

Granting of such relief *enforces* the finality of the arbitration award which both parties bargained for, and without which there could be no "final settlement".

Additional consistency of the decision in question with controlling case law and statutes appears yet again within the *Buffalo* opinion:

> "Furthermore, were the issue [of illegal strike action] arbitrated and the strike found illegal, the relevant federal statutes as construed in our cases *would permit* an injunction to enforce the arbitral decision. *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.S. 593, 80 S.Ct. 1358." *Buffalo Forge,* supra, 428 U.S. 405, 96 S.Ct. 3147.

Clearly, under the above rulings, once a dispute subject to mandatory arbitration has been fully submitted on its merits, and the arbitrator has issued a final ruling and award, injunctive relief to *enforce* the award is wholly proper.

Nothing in any of the cases cited in the union's petition remotely suggests that arbitration is an *end* in itself, to be endlessly pursued without regard for final termination of a given set of issues. To the contrary, as indicated above, the

central purpose and sole justification for *fostering* arbitration, is *final* resolution of covered disputes in a peaceful manner.

Neither Collins nor SFECA challenges here the clearly expressed judicial and congressional preferences for binding arbitration as the most desirable and expeditious forum for resolution of labor disputes. What they vigorously deny is the union's alleged right to re-submit issues identical to those resolved at one arbitration, before a new arbitrator, on the sole premise that the arbitration clause covers "any matter" of dispute not settled by the grievance committee. Such an interpretation would allow any party dissatisfied with one arbitration result, to indefinitely protract the course of settlement, by repetitious re-arbitrations of same or similar claims, until a favorable result was obtained, or the opponent was forced by time considerations to default the interminable contest.

Such an interpretation completely frustrates the central purpose of arbitration, and denies the prevailing party the benefit of bargained-for *finality*. Moreover, the position taken by the union in the present case would effectuate a complete travesty of the vital concept of respose embodied by the doctrine of *res judicata*. An unfettered freedom of identical parties to re-arbitrate substantially identical fact issues, of a technical and economic complexity, would doubtless generate more friction than cooperation between labor and management, and multiply, rather than diminish, economic hardships to all involved.

This same conclusion flows from an analysis of the reciprocal duties created by the instant collective bargaining agreement. Viewed against the expressed congressional

policy of peaceful *settlement* of disputes, the parties to the original dispute (summarized in the arbitration award, F-1 - F-3 of appendix) had mutual duties to set forth their best statements of the issues of dispute. Having once joined the issues before the arbitrator, each party had further duties to produce the best evidence available in support of its position, to fully examine the merits of the opponent's position and evidence, to present its most persuasive arguments, and thereafter to finally submit the entire dispute for decision by the arbitrator. In the event that the union, through no fault of its own, had overlooked relevant evidence, or discovered additional critical circumstances not reasonably available before or during the hearing, it had an implicit duty to promptly advise the opponent and the arbitrator.

Had the union done so on March 18, 1977, rather than gambling on a favorable result, the original arbitrator might have considered reopening the matter, given Collins a chance to respond, and thereafter proceeded to complete his ruling. If the union felt strongly enough over its "discovery" on the day after the first hearing to later initiate a whole new grievance, certainly it had ample cause to advise the arbitrator best informed of the technical characteristics of the original dispute. By failing to do so, the union automatically created a second period of delay and frustration inherent in the processing of a second grievance.

In the instant case, construction scheduling, and Collins' concerns over compliance with the owner's Change Order and U.L. requirements, caused it to change its position and commence factory modification of the fixtures, even while the first arbitration was under submission. The union

was doubtless also aware that time was of the essence in this particular job. Consequently, the need for "expeditious settlement" was pressing, and the bar of *res judicata,* determined by the District Court, was appropriate under the circumstances. Hence, there was no further duty by Collins to commence an entire new course of grievance and arbitration, before a new arbitrator on May 19, 1978, after the union had conclusively lost on the identical dispute.

II. The District Court Had Jurisdiction To Review The Scope Of Issues Presented In The Alleged Second Grievance, And To Bar Further Strike Action Or Arbitration Based On The Doctrine Of Res Judicata.

Nothing in the District Court's action in comparing the issues of the first grievance and award, with the second alleged dispute, followed by preliminary injunction, is inconsistent with present case or statutory law. In *John Wiley & Sons v. Livingston,* 376 U.S. 548, 84 S.Ct. 909 (1964), the Court clearly re-affirmed the long standing *primary* jurisdiction vested in the District Court, to determine what issues may be subjects of compulsory arbitration:

> "'Under our decisions, whether or not the company was bound to arbitrate, *as well as what issues it must arbitrate,* is a matter to be determined by the Court on the basis of the contract entered into by the parties.' *Atkinson v. Sinclair Refining Co.,* 370 U.S. 238, 241, 82 S.Ct. 1318, 1320, 8 L.Ed.2d 462. Accord, e.g., *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409 . . . The duty to arbitrate being of contractual origin, a compulsory submission to arbitration *cannot* precede *judicial* determination that the collective bargaining agreement does in fact create such a duty." (emphasis added) 84 S.Ct. 913, (see also *Buffalo Forge* referred to above.)

Here, the District Court found that identical issues had just been resolved by an arbitration award, and that the contract made the award final and binding. Implicit in these findings was a finding that the contract did *not* compel or allow re-arbitration of the same issues.

The union assertion that *only* a second arbitrator could consider the defense of *res judicata* is thus completely at odds with the above line of cases, as well as a New Jersey District Court opinion. In *Todd Shipyards Corp. v. Industrial Union of Marine Workers,* 242 F. Supp. 606 (1965), the Court granted declaratory relief to the employer, upholding a favorable discharge ruling after arbitration, and *barred* further arbitration or litigation of the same issues by the employee, with the following explanation:

> "Defendant argues that *res judicata* is a defense on the merits and one for an arbitrator to determine on hearing the instant grievance . . .
>
> The contention that *res judicata* is a defense on the merits would be persuasive in a situation where in the application of the doctrine it is necessary to resolve a *genuine issue* of material fact. Such is *not* the case here. The opinion of Arbitrator Davis is clear and unambiguous, *precisely covering the subject matter of the grievance presented by defendant,* i.e. Bateman's discharge from employment with plaintiff at its Hoboken yard. An award of an arbitrator acting within the scope of his authority *has the effect of a judgment and is conclusive as to all matters* submitted

for decision at the instance of the parties. *Panza v. Armco Steel Corp.*, 316 F.2d 69 (3rd Cir. 1963); See 5 Am.Jur.2d, Arbitration and Award § 147. Moreover the *finality of disposition* of a grievance by arbitration is what the parties here *contemplated by express provision in the labor agreement.*" 242 F. Supp. at 611 (emphasis added)

The union's reliance on the limited ruling set forth on laches in *Operating Engineers v. Flair Builders,* 406 U.S. 487, 92 S.Ct. 1710 (1972) is totally misplaced. In that case, *no* grievance or arbitration on the merits had occurred, and referral of the defense of laches to the arbitrator created no duplicate burdens, nor eviscerated the finality of an unambiguous earlier award.

III. The Preliminary Injunction Confirmed on Appeal Properly Accommodates Section 301 of the Taft Hartley Act With Sections 4, 7, 8 and 9 of The Norris-LaGuardia Act.

The union's petition makes incorrect assertions that the Norris-LaGuardia Act bars the injunctive relief granted in the instant case. This position wholly disregards the process of accommodation of this early legislation with later jurisdictional powers set forth in Section 301 of the Taft Hartley Act, 29 U.S.C. § 185, as required by *Boys Markets:*

> "As labor organizations grew in strength and developed toward maturity, congressional emphasis shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes. This shift in emphasis was accomplished, however, without extensive revision of many

> of the older enactments, including the anti-injunction section of the Norris-LaGuardia Act. Thus it became the task of the courts to *accommodate,* to reconcile the older statutes with the more recent ones." 398 U.S. 250, 90 S.Ct. 1592.

The Court then proceeded to define the process of accommodation, and the circumstances for which it was appropriate:

> "A leading example of this accommodation process is *Brotherhood of Railroad Trainmen v. Chicago River & Ind. R. Co.,* 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed.2d 622 (1957). There we were confronted with a peaceful strike which violated the statutory duty to arbitrate imposed by the Railway Labor Act. *The Court concluded that a strike in violation of a statutory arbitration duty was not the type of situation to which the Norris-LaGuardia Act was responsive,* that an important federal policy was involved in the peaceful settlement of disputes through the statutory mandated arbitration procedure, *that this important policy was imperiled if equitable remedies were not available to implement it,* and hence that Norris-LaGuardia's policy of nonintervention by the federal courts should *yield* to the *overriding interest* in the successful implementation of the arbitration process." Id. at 90 S.Ct. at 1594, 398 U.S. at 253. (emphasis added)

In the same passage, this Court extended this concept of accommodation to cases involving purely contractual, nonstatutory duties of compulsory binding arbitration.

Therefore, the facts of the present case also required that such an accommodation occur. The District Court's preliminary injunction *enforcing* the final result of compul-

sory arbitration, is wholly distinct from the *ex parte* type orders, and associated evils, at which the Norris-LaGuardia prohibitions were initially directed. Its main purpose and immediate effect was *not* to prevent peaceful resolution of labor strife, but to implement the end product of a comprehensive and full arbitration hearing on the merits.

Similar evasive tactics on the part of a union, which had lost an arbitration award, were unconditionally *rejected* by this Court in the case of *International Longshoreman Association v. Philadelphia Marine Trade Association,* 389 U.S. 64, 88 S.Ct. 201 (1967):

> "We do not review here, as in *Sinclair,* a refusal to enter an order prohibiting unilateral disruptive action on the part of a union *before* that union has submitted its grievances to the arbitration procedure provided by the collective bargaining agreement. Rather, the union in fact submitted to the arbitration procedure established by the collective bargaining agreement, but, if the allegations are believed, *totally frustrated* the process by refusing to abide by the arbitrator's decision. Such a 'heads I win tails you lose' attitude plays fast and loose with the desire of Congress to encourage the peaceful and orderly settlement of labor disputes." (emphasis added) 88 S.Ct. at 209.

CONCLUSION

A close review of the extensive arbitration proceedings set forth in the award discloses good faith submission by respondent and the employer of the initial grievance to binding arbitration. All parties had ample opportunity to present issues, exchange exhibits, cross-examine witnesses, and fully explore the ramifications of ECS usage by Collins.

Numerous statements by the union before and during the arbitration disclose a full comprehension of the ECS, its adapter features, and the fact that the system, with adapters and fixtures, must be factory pre-assembled, although eliminating major portions of allegedly protected work. Therefore, union attempts to re-arbitrate substantially identical issues, on being advised of loss at the first arbitration, was an abuse of the arbitration clause. Strike action taken to force handling of a second grievance over the same issues was properly enjoined by the District Court, as the first award was *res judicata,* barring further arbitration or dispute. The District Court's proper exercise of its primary jurisdiction served to implement, not obstruct the arbitration process. Therefore, the decision of the Court of Appeal in affirming the injunction was consistent with current statutes, case law and labor policy as interpreted by this Court. Under all these circumstances, the union's petition for writ of certiorari should be denied.

Dated: October 18, 1978.

Respectfully submitted,
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